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1500 MONTREAL ROAD
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APR 21 2004

In re Application of
Henryk Borowy-Borowski et al.
Application No. 10/648,371
Filed: August 27, 2003
Attorney Docket No. 10975-1C

OFFICE OF PETITIONS
DECISION GRANTING PETITION

This is a decision on the petition filed February 24, 2004, requesting that the above-identified application be accorded a filing date of August 27, 2003, with a complete specification and oath or declaration as a part of the original disclosure.

The petition is **GRANTED**.

The application was filed on August 27, 2003. However, on January 20, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because a complete specification in compliance with 35 U.S.C. § 112 and an oath or declaration in compliance with 37 CFR 1.63 were missing.

In response, on February 24, 2004, the present petition was filed, accompanied by, inter alia, 61 pages of specification and a 3 page oath or declaration. Petitioners assert that the above-identified application is a continuation of Application No. 09/773,592 filed February 2, 2001.

A search of the official file reveals that on August 27, 2003, a "Utility Patent Application Transmittal" letter indicated that the application was a continuation of application No. 09/773,592, and that the entire disclosure from the prior application is incorporated by reference.

Based on petitioners' representation that the papers supplied with the petition constitute a copy of the "entire submission" of the present application, and the incorporation by reference statement appearing on the transmittal letter deposited on August 27, 2003, stating that the entire disclosure of Application No. 09/773,592 was incorporated by reference in the present application, it appears that the specification and oath or declaration was present in the Office on August 27, 2003, albeit in the file of another application, i.e., Application No. 09/773,592. Therefore, on petition, the application may be accorded the requested filing date.

The application will be processed and examined with the 61 pages of specification and 3 page oath or declaration supplied on February 24, 2004, as a part of the original disclosure.

The petition is **granted**. Since the petition was required to accord the requested filing date, the petition fee of \$130.00 will not be refunded.

The primary examiner is expected to compare the specification and oath or declaration supplied on February 24, 2004, to the disclosure of prior application No. 09/773,592 in

order to verify that the specification and the oath or declaration are in fact, a part of the disclosure of the prior application.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to August 27, 2003, using the application papers filed August 27, 2003 and that while the 61 pages of specification and 3 page oath or declaration supplied on February 24, 2004 were not present on filing, they were a part of the original disclosure.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions